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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 585

MRS. OSCAR DOTY ET AL.,

Appellants,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS OF THE STATE OF MISSISSIPPI.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT OF FACTS SHOWING JURISDICTION.

The Peoples Bank & Trust Company of Tupelo, Mississippi, was closed for liquidation on the 24th day of December, 1930, and its affairs were turned over to J. S. Love, Superintendent of Banks, for liquidation, according to the banking laws of this State, and V. S. Whitesides, former Cashier of the bank, was placed in charge as liquidating agent, and the liquidation of the bank proceeded under the direction and supervision of J. S. Love, Superintendent of Banks, until the 15th day of May, 1933.

On the 4th day of May, 1933, a decree was signed by the Chancellor directing that notice be given to the depositors of the bank in liquidation, to appear on the 15th day of May, 1933, and show cause, if any they could, why this bank should not be reopened for business (R. 25-26).

This proceeding was instituted under the provisions of Chapter 251 of the Laws of Mississippi 1932, it being sought by this proceeding to reorganize a bank under the provisions of this law, and a petition purporting to set up the proposed plan was filed in the office of the Chancery Clerk of Lee County, Mississippi, which bill contained a statement of the Peoples Bank & Trust Company as of December 24, 1930, the date of the closing of the bank, showing assets of $2,477,114.78 (R. 19). And attached to the bill as Exhibit No. 2 was a depositor's agreement purporting to have been signed by 75 per cent of the depositors of said bank, and setting out the terms upon which said bank should be reopened (R. 20). Said agreement provided in substance that each depositor should receive 25 per cent of his deposits, payable as follows:

"(*a*) 5 per cent of the original amount (or 20 per cent of the depreciated amount) as of date of reopening.

(*b*) Balance to be paid in instalments whenever collections have been made from the assets taken over from the closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments are to be without interest.

(3) That the remaining 75 per cent of my, or our, balance or credit is to be charged to my or our account, and set up in a special account to benefit from a trust fund hereinafter provided.

(4) The Superintendent of Banks is to make an examination of the bank, and is to put into the reopened bank a sufficient amount of the assets of the bank now

in liquidation to insure the collection therefrom of sufficient funds to pay to the depositors and creditors of the bank now in liquidation the 25 per cent of their deposits and claims, which are to be assumed as a liability of the reopened bank, and the remainder of the assets of the bank now in liquidation are to be charged out of the bank and carried into a special fund known as "Pool Assets," to be managed and collected by the reopened bank for my or our benefit and distributed *pro rata,* after a sufficient amount has been collected from the present assets of the bank to pay all depositors and creditors 25 per cent of their claims.

(5) That the said special fund designated as a pool and the assets from which it is derived is to be administered and distributed by the reopened bank, under the jurisdiction of the Chancery Court of Lee County, Mississippi, as a trust fund, and subject to the supervision of the Superintendent of Banks, and the said reopened bank is to receive for the handling and collection of same, 10 per cent of the amount which it collects, plus any attorney's fees and court costs incurred.

(6) It is further agreed that the *Peoples Bank & Trust Company is to be reopened with not less than* $35,000.00 *capital stock, fully paid in cash,* and in consideration of the benefits to accrue from the reopening the undersigned, as a depositor or creditor, does *hereby agree that such of the stockholders in the Peoples Bank & Trust Company as shall pay in cash to provide the capital stock for the reopened bank— 50 per cent of the amount of their stock in the Peoples Bank & Trust Company at closing, shall be relieved and released from further liability to the depositors of the bank in liquidation,* but that such stockholders as do not pay 50 per cent of their stock into the capital of the reopened bank shall remain liable for the full amount of their stock liability, and which shall become part of the assets known as the pool, to be administered as a trust hereinabove provided.

(7) Nothing in this agreement is to be construed as relieving the stockholders in the reopened bank from any liability under the law upon stockholders in anything that may occur in the operation of the reopened bank."

On page 21 of the record is a statement of the condition of the Peoples Bank & Trust Company in Liquidation as of May 1, 1933, showing assets of $1,901,672.92, while on page 22 of the record is a statement of the trust funds or "pool assets" which are purported to be held in trust for the benefit of depositors, which assets amount to $1,281,-972.47, leaving a difference of $619,700.45; while on page 23 of the record is a statement showing the condition of the Peoples Bank & Trust Company as of the date of opening, showing assets of $467,214.50, leaving a difference of $152,485.90 between the assets in the pool and the assets carried into the new bank, and the assets shown to be on hand. Under the plan of reopening proposed, assets belonging to the Peoples Bank & Trust Company in the sum of $467,214.50, of which $102,302.98 is cash, are turned over to the new bank, and for which assets the depositors are to receive 5 per cent of the amount of deposit on hand in the closed bank on the date of the reopening, and 20 per cent if and when collections have been made from the assets taken over from the closed bank.

At the time of the closing of the bank there was on deposit to the credit of individual depositors the sum of $685,460.58; savings deposits in the sum of $803,118.44; time certificates of deposit, $159,544.13; cashier's checks in the sum of $10,699.30; and to the credit of the Nettleton branch, $210.18, making a total of $1,659,032.63, 25 per cent of which would be $414,758.15. But, as shown by the statement as of May 1, 1933, there was only $1,311,303.43 in participating certificates outstanding, which participat-

ing certificates under the law represents the deposits entitled to participate in the distribution of the assets, and 25 per cent of this amount is $327,825.85.

The reopening agreement provides for the payment to the depositors of 5 per cent of the deposits; that is, 5 per cent of $1,311,306.43, on reopening. This 5 per cent amounts to $65,565.12, of which 3/5 is derived from the depositors' protective fund to which the depositors were already entitled. Yet, there is turned over to the bank at reopening the sum of $102,302.98 in cash, or $36,737.81 in excess of the amount repaid to depositors on that date. And, in addition thereto, there is turned over to the stockholders of the bank bonds carried at $57,500.00, and, according to the testimony, these bonds are worth in excess of that amount.

It is therefore to be seen from these figures that at the time of the reopening, if the Superintendent of Banks had distributed the cash actually on hand at the time of the entering of the decree in this case, the depositors would have received $36,737.81 more than they did receive, and if the bonds and stocks had been converted into cash at the price at which they were carried into the new bank, he could have paid to the depositors $94,257.00 more than was paid to them at that time, and would have had remaining in his hands bills receivable carried into the new bank as being worth at least $216,892.00; overdrafts of the value of $4,100.00; furniture and fixtures valued at $5,000.00; real estate carried into the new bank at a value of $68,917.00; three bank buildings carried into the new bank at the value of $12,500.00; which, with the other items listed as carried into the bank, makes the sum of $467,214.50; although according to the testimony these assets are worth considerably more than the values at which they were carried into the new bank. Thereby depriving appellants of

their property without due process of law or without compensation having been made therefor.

The bill further shows on its face that at the time of the filing thereof the Superintendent of Banks had in his hands the sum of $10,905.10, collected on account of stockholders' liability, in excess of 50 per cent of their liabilities, which sum he proposed to refund to the stockholders upon their taking stock in the new bank, which $10,000.00 if added to the amount that could be paid to the depositors out of the assets on hand; and inasmuch as all public funds, bills payable to correspondent banks and preferred claims had been satisfied, there was available for payment to the depositors assets of the face value of $1,901,672.29, as shown by Record page 21.

Mrs. O. C. Doty was served with process in this case, but Mrs. Lorene Roberts Tolman, a non-resident, was not, and, so far as the record discloses, had no notice or knowledge of this proceeding until after the entering of the decree herein. Mrs. Doty filed exceptions or objections to the reopening, as did a number of other depositors.

In the objections filed, appellants objected to the reopening of the bank upon the terms proposed and assigned many objections, among which were the following: That the funds of these depositors were deposited in the bank prior to the passage of Chapter 251 of the Laws of Mississippi 1932, and that said funds were deposited subject to the conditions named in the pass book of those who deposited in savings accounts, and under the terms of the deposit slip issued to those depositing in checking accounts, with the right on the part of all said depositors to withdraw their funds, from time to time, as they saw fit, according to the terms of the deposit, and with all the rights, privileges and remedies then provided by law for the enforcement of collections of the same, and under the laws

theretofore enacted and then in force for the benefit of depositors and for the liquidation of banks, and alleged that the statute under which this bill was filed for the reopening of said bank was unconstitutional and of no force and effect, in so far as any rights on the part of said Superintendent of Banks to have said bank reopened upon the terms set out in the petition, for the reason that the said statute violates Article 1 of Section 10 of the Constitution of the United States, and Section 16 of the Constitution of the State of Mississippi; and also violates the 14th Amendment to the Constitution of the United States and Section 14 of the Constitution of the State of Mississippi of 1890; that it also violates Section 17 of Article 3 of the Constitution of the State of Mississippi; and assigns the further ground that the law as written and attempted to be enforced in this case is unlawful and unjust in that it makes no distinction in the right to petition for composition or reopening of the bank between ordinary depositors and stockholders being depositors therein, and is further unlawful and unjust in that it attempts to give correspondent banks the right to collect in full the money due them by the failed bank, and denies such rights to private citizens, partnerships, or other corporations, who have loaned money to said bank and hold their obligations therefor. Further, that it is not proposed for the stockholders in the new bank to place any additions, by way of capital stock, surplus, or anything else of value, other than the amounts to be taken from the present assets of said bank belonging to the depositors. Further, because it proposes to remit one-half of the stockholders' liability of the solvent stockholders who will pay into the reorganized bank, one-half of their liability to be used as capital stock, and in consideration of the payment of which there is to be issued

to the stockholders in the new bank certificates of stock therefor, and to release the entire amount of the stockholders who are solvent, from liability for the payment of the stock liability fixed by law, in contravention of the provisions of the statute which provides expressly that the funds derived from the stockholders' liability shall be used for the payment of the depositors and no other, and thereby creates a special trust fund for the benefit of depositors. It is further assigned as an objection that it is proposed to refund to certain favored stockholders more than $10,000.00 of funds already collected and held in trust by the Superintendent of Banks for the benefit of depositors; said $10,000.00 having been collected from the stockholders' as stockholders' liability on account of stock held by them in the Peoples Bank & Trust Company in Liquidation. Further, that under the proposed terms the depositors are to receive no interest on the amounts proposed to be paid to them out of the assets of said bank, while all of the assets proposed to be turned over to the new bank or reorgnized bank bear interest, or bring in income. Further, because no time is fixed whatever for any payment other than the 5 per cent cash on the reopening of said bank. Further, for the reason that it is proposed to transfer the title in and to the stock of the value of thousands of dollars, and real estate in the amount of $373,623.00, and bank buildings of the value of $55,000.00, to the reopened bank, and to vest title to said property in said bank with a signed agreement or understanding that the new bank will agree upon the disposition of said property, and retain for its own use and benefit, from the sale of stocks and bonds $7,500.00, furniture and fixtures $5,000.00, real estate $68,917.50, three bank buildings $12,500.00. Further, because it is proposed in said plan for the new bank to receive a flat rate of 10 per cent on all small sums collected from the

assets in the so-called pool, regardless of the expenses or trouble that may be necessarily incurred in making such collections, and also all attorneys' fees expended in realizing on said assets, and to receive in addition thereto all the rents, interest, incomes, and profits from said property placed in said pool, in which is included real estate of the value of $425,000.00 which is to be turned over to the said bank for no consideration whatever, and without any income or profits to be derived therefrom by the depositors, it being provided in said proposed plan that, "It is further contemplated that all rents and income coming from this real estate is to be carried into the reopened bank, as long as the reopened bank carries a real estate account on their books." It is further proposed in said plan that the new or reopened bank have the use of the bank buildings and fixtures, three in number, without paying any rent therefrom to the depositors or creditors. It is further set out in the objections that many large, reckless and illegal loans were made contrary to law to the officers and directors, and relatives of the officers and directors, and that no provision is made for the collection or prosecution of any claims against officers and directors for these illegal and excessive loans.

It is also further urged by the objectors that Chapter 251 of the Laws of Mississippi 1932, is unconstitutional and void and violative of the State and Federal Constitutions, in that it provides for no notice of a hearing, and that the Chancery Court was without jurisdiction under any statute now existing in the State of Mississippi for the hearing and determination of this class of cases in vacation, without the consent of all parties in interest, and set out in said objection that if they were mistaken as to the constitutionality of said section that the plan proposed

was in direct conflict with Section 3 of said Chapter, which is as follows:

> "That this Act shall not be so construed to give the Superintendent of Banks the right to diminish the assets of a closed bank to the prejudice of depositors and creditors thereof, and any assets that may be charged out as doubtful, or as losses, shall be held by the bank and collected for the benefit of its depositors and creditors, and all accounts so collected shall be held by the bank to be paid by them in accordance with the agreement for the repayment of their deposits and claims."

The proposed plan provides for the diminishing of the assets and obsolute transfer of several hundred thousand dollars of assets of said bank without any consideration whatever therefor, and does not provide for the prosecution of any meritorious claims that may exist against officers and directors for the negligent, careless and unlawful handling of the original bank's affairs, or the prosecution and recovery of any claims to which the depositors may be entitled against the various surety companies for and on account of liability of officers and employees for the illegal acts of the officers, directors, and employees of said bank.

That the bond of the liquidating agent is attempted to be cancelled; also the bond of the Superintendent of Banks, which bond is required by statute as a condition precedent to his entering upon the discharge of his duties as such. That the proposed plan is inequitable, unjust and unauthorized by law, and results in impairing the obligations of the contracts of the objectors and all other depositors, and deprives them of their property without due process of law, and without compensation first having been made therefor.

Further, that neither the court nor the Superintendent of Banks has any authority of law to remit or relieve stock-

holders of their liability on account of stock owned by them in insolvent banks.

That no provision is made in the proposed plan as to the payment of the percentage to which the depositors of the Peoples Bank & Trust Company in Liquidation are entitled to receive from the "Depositors' Protective Fund," under the laws of the State of Mississippi.

Mrs. Lorene Roberts Tolman not being a party to the suit in the court below, and having no notice thereof, so far as the record discloses, now raises the further ground that Chapter 251 of the Laws of Mississippi 1932, in so far as it affects her, is unconstitutional and in conflict with the National Bankruptcy Acts of the United States, and that she cannot be deprived of her rights as a creditor of said bank proceedings of this character.

In the depositor's agreement filed as an exhibit to this bill there was no mention of any distinction between the amounts to be paid to the various depositors, but under the decree entered herein certain of the depositors are paid in full, while others are paid in accordance with said agreement. Neither is there anything in the depositor's agreement setting up that the reorganized or new bank shall receive all the incomes, rents and profits from the assets of said bank in liquidation, although the decree so provides. Neither is there anything in the depositor's agreement to show that any refund was to be made to the stockholders who had already paid their stock liability. Nor is there anything in said agreement advising or proposing that the title to all the real estate and other assets shall be vested in the new bank without consideration to the depositors in the old bank. In fact, by a comparison of the depositor's agreement with the decree entered in this cause it will be readily seen that the decree is not in accordance with the

proposed plan as set out in the original bill, or the depositor's agreement, in many particulars.

Respectfully submitted,

E. C. SHARP,
GEO. T. MITCHELL,
CHAS. MITCHELL,
Attorneys for Appellants.

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